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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6959

In the Supreme Court of Appeals of Virginia at Richmond

JAMES JUNIOR SULLIVAN, alias, etc.

v.

COMMONWEALTH OF VIRGINIA

FROM THE CORPORATION COURT OF THE CITY OF ALEXANDRIA

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6959

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 23rd day of April, 1968.

JAMES JUNIOR SULLIVAN,
ALIAS JAMES HUGHES, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Corporation Court of the City of Alexandria
George M. Giammittorio, Judge

Upon the petition of James Junior Sullivan, alias James Hughes, a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Alexandria on the 12th day of September, 1967, in a prosecution by the Commonwealth against the said petitioner for a felony (Criminal Case No. F-243); but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

* * * * *

AFFIDAVIT FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, James Junior Sullivan, alias James Hughes, being duly sworn according to law, depose and say that I am the plaintiff in error in the above-entitled cause and in support of my application for leave to proceed without being required to prepay cost or fees state:

1. Because of my poverty I am unable to pay the cost of printing the record in the above styled case.
2. I am unable to give security for the same.

JAMES JUNIOR SULLIVAN
ALIAS JAMES HUGHES

Subscribed and sworn to before me this 4th day of Sept. 1968.

ARTHUR H. RATCLIFFE
Notary Public

My commission expires December 13, 1971.

Recd.—9-9-68.

H. G. T.

* * * * *

CERTIFICATE OF TRIAL COURT JUDGE OF INDIGENCE OF PLAINTIFF IN ERROR

After investigation of the financial condition of the above-named plaintiff in error, I am of the opinion that the plaintiff in error in this cause, because of poverty, is unable to pay the cost of printing the record in the above-entitled cause and that he is also unable to give security for the same.

GEORGE M. GIAMMITTORIO

Recd.—9-9-68.

H. G. T.

RECORD

* * * * *

page 1 }

* * * * *

WHEREAS Det. Sgt. C. H. Fitzsimmons, has this day made complaint and information on oath, before me, Michael P. Frasca, a Special Justice, the undersigned, that James Sullivan, Jr., 1600 W. Braddock Rd., Alexandria, Virginia on or about the 26th day of March, 1966, in said City, did feloniously violate the provisions of Section 18.1-89 of the 1950 Code of Virginia, as amended, in that he did unlawfully and feloniously did break and enter in the night time of that day, the Alexandria Housing Authority Building, located at 3210 King Street, this city and did take steal and carry away, One Esso Credit Card, bearing the name of Alexandria Redevelop. Corp., this against the Peace and Dignity of the Commonwealth of Virginia.

* * * * *

page 2 }

* * * * *

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Alexandria, and now attending said court at the September, 1966 term thereof, upon their oaths present that JAMES JUNIOR SULLIVAN, alias James Hughes, on or about, to-wit, the 26th day of March, 1966, in the nighttime, in said city, feloniously did break and enter the shop and storehouse of Alexandria Housing Authority, Inc., a corporation, said shop and storehouse being situated in said city, with intent the goods and chattels of the said Alexandria Housing Authority, Inc., a corporation, in said shop and storehouse then and there being found, then and there feloniously to steal, take and carry away, against the peace and dignity of the Commonwealth.

* * * * *

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* * * * *

This day came again the Attorney for the Commonwealth and James Junior Sullivan alias James Hughes, who stands indicted of a felony, to-wit: Statutory Burglary, was led to the bar in the custody of the jailor of this court, accompanied by Joseph B. Bullock, his counsel.

Whereupon the accused having been previously arraigned and entered a plea of not guilty, and thereupon the accused after having been first advised by his counsel, waived trial by jury and with the concurrance of the Attorney for the Commonwealth and of the court, here entered of record, the court proceeded to hear and determine the case without the intervention of a jury, as provided by law, and having heard the evidence of the Commonwealth, the attorney for the accused motioned the court to strike the evidence, which motion was by the court denied, and the defendants exceptions duly noted, and

Thereupon, the court, doth find the accused guilty of Statutory Burglary as charged in the indictment, and

Whereupon the attorney for the accused motioned the court to set aside the verdict as contrary to the law and evidence, which motion was denied by the court, and the defendants exceptions duly noted.

Thereupon, the court, on motion of the Attorney for the Commonwealth before fixing punishment or imposing sentence, doth direct the Probation Officer of this court to thoroughly investigate and report to the court as provided by law, on the 11th day of July, 1967, at 10 o'clock A.M., to which time this case is continued.

And the accused is remanded to jail.

GEORGE M. GIAMMITTORIO, Judge

Entered May 25, 1967.

* * * * *

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* * * * *

In the Corporation Court of the City of Alexandria.

* * * * *

This day came again the Attorney for the Commonwealth and James Junior Sullivan who stands convicted of a felony, to-wit: Statutory Burglary, was again led to the bar in the custody of the jailor of this court and came also Joseph B. Bullock his counsel.

And the probation officer of this court, to whom this case has been previously referred for investigation, appeared in open court with a written report, which report he presented to the court in open court in the presence of the accused who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for accused.

Thereupon the accused and his counsel were given the right to cross-examine the probation officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as he desired to present. The report of the probation officer is hereby filed as a part of the record in this case.

Whereupon, the court, taking into consideration all of the evidence in the case, the report of the probation officer, the matters brought out on cross-examination of the probation officer and such additional facts as were presented by the accused, doth ascertain and fix the punishment of the accused to be confinement in the penitentiary of this Commonwealth for a term of ten (10) years.

And it being demanded of the accused if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment it is accordingly the judgment of this court that the said James Junior Sullivan be and he is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of ten (10) years, the period by the court ascertained as aforesaid, and that the Commonwealth do recover against the said James Junior Sullivan its costs by it about its prosecution in this behalf expended, towit: $364.77.

page 37 } The court on motion of the defendant by counsel doth suspend execution of sentence for four (4) months to allow time to perfect appeal.

And the prisoner is remanded to jail.

GEORGE M. GIAMMITTORIO, Judge

Entered September 12, 1967.

* * * * *

page 40 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To: ALVIN W. FRINKS, Clerk of the Corporation Court of the City of Alexandria

Counsel for the defendant in the above styled case hereby gives notice of an appeal from the final judgment entered herein on the 12th day of September, 1967.

James Junior Sullivan, the defendant in the above styled suit, will apply to the Supreme Sourt of Appeals of Virginia for a writ of error to said judgment and herein sets forth his assignments of error as follows.

1. Trial court erred in overruling defendant's motion to set aside the verdict as contrary to law and evidence.

2. *Defendan't* initial arrest for disorderly conduct was unlawful as the arrest was based upon Chapter 23, Section 39, Code of the City of Alexandria, 1963, as amended, and that said section of said chapter, in failing to satisfy the requirements of certainty and definiteness, violates the due process clause of the 14th Amendment to the Constitution of the United States.

3. Seizure of the credit card from the person of the defendant constituted an illegal search and seizure in violation of defendant's rights as protected by the 4th Amendment to the Constitution of the United States.

Dated this, the 13th day of November, 1967.

JAMES JUNIOR SULLIVAN, Defendant

By: JAMES JUNIOR SULLIVAN
Counsel

* * * * *

Filed Clerk of Courts, City of Alexandria, Nov. 13, 1967, 10:43 A.M., Alvin W. Frinks, Clerk by K. F. BRADFIELD, Deputy Clerk.

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NOTICE OF APPEAL AND
ASSIGNMENT OF ERROR

To: ALVIN W. FRINKS, Clerk of the Corporation Court of the City of Alexandria

Counsel for the defendant in the above styled cases hereby gives notice of an appeal from the final judgments entered herein on the 12th day of September, 1967.

James Junior Sullivan, the defendant in the above styled suits, will apply to the Supreme Court of Appeals of Virginia for a writ of error to said judgments and herein sets forth his assignment of error as follows.

1. Trial court violated defendant's right against cruel and unusual punishment as protected by the Eighth Amendment to the Constitution of the United States by imposing upon the defendant a total of ninety (90) years to run consecutively and to be served by him in the penitentiary.

Dated this, the 13th day of November, 1967.

JAMES JUNIOR SULLIVAN, Defendant

By: JAMES JUNIOR SULLIVAN
Counsel

Filed Clerk of Courts, City of Alexandria, Nov. 13, 1967, 10:41 A.M., Alvin W. Frinks, Clerk by K. F. BRADFIELD, Deputy Clerk.

* * * * *

page 3 }

* * * * *

Whereupon

SUSAN LINDNER a witness, was called for examination by counsel on behalf of the Commonwealth, and, after having been duly sworn, was examined and testified as follows:

Susan Lindner

DIRECT EXAMINATION

By Mr. Kent:

Q. Would you please state your name?

A. Susan Lindner.

Q. Where are you employed?

A. I work for the Alexandria Housing Authority.

Q. Where is that?

A. In Chinquapin Village.

Q. What is the address of that?

A. 3210 King Street.

Q. Is that in the City of Alexandria?

page 4 } A. Yes, sir.

Mr. Bullock: Could you repeat the address?

The Witness: 3210 King Street.

By Mr. Kent:

Q. Is that Miss or Mrs. Lindner?

A. Mrs.

Q. Mrs. Lindner, I call your attention to March 25, 1966. Were you employed then by the Alexandria Housing Authority?

A. Yes, sir.

Q. Do you recall that day?

A. That was a Friday if I'm not mistaken, or a Saturday.

Q. In what capacity did you work in the Alexandria Housing Authority?

A. I'm a rental agent and a clerk. Cashier-clerk is the title of my job and I take care of the rental for th-e Chinquapin Village project.

Q. I see.

I show you this item. Can you identify that for the Court?

A. This is a gasoline credit card that is used by my office for the maintenance men's use on their trucks.

Q. Who has custody of that card?

A. It's kept in my office at my desk.

page 5 } Q. Was it, on the day that I stated to you before, was that card on your desk when you left the office that day?

A. Yes, sir.

Q. Did there come a time when you returned to your office after leaving that day?

A. The following Monday.

Susan Lindner

Q. Was the card there, then?

A. No, sir. This was the only thing that was missing out of my office.

Q. Was there anything unusual about your office when you returned to it, other than this card that was missing?

A. It was in a mess.

Q. Would you describe the mess that you report?

A. Well, first of all, I have a Moser safe that I use for my money deposits and it had been chiseled and attempted to be broke into, which it was not, and there were several papers on my desk that had been gone through.

And then the other office that adjoins mine, nobody occupies the office, but the desk had been torn apart, and I don't know. Just generally—just messed up.

Q. Who was the last person to leave that day, do you know?

A. I was the last person to leave my office proper.

page 6 } Q. Was your office proper locked?

A. Yes, sir, it was.

Q. Did you lock it yourself?

A. Yes, sir.

Q. Was there anyone else in the building when you left?

A. Yes, sir.

Q. Who was that?

A. Mr. Walker, Willie Walker. He is the head maintenance man right there at Chinquapin Village and he stays with me at night so I won't have to be alone in case I have a large deposit.

Q. I see.

Mrs. Lindner, about what time did you leave the office that day?

A. About five o'clock. I generally leave right at five, maybe a few minutes before, but never before five minutes of.

Q. Can you positively identify this card as being the same one that was on your desk?

A. It looks exactly like the one that was there. It has the same identifying number.

Q. And you recall that number without looking at the card?

page 7 } A. Yes, sir.

Mr. Kent: Your Honor, I would like to offer this as, for identification only, as Commonwealth's Exhibit No. 1.

Susan Lindner

That's all the questions I have of this witness at this time.

The Court: Let the Esso credit card be marked for identification as Commonwealth's Exhibit No. 1.

(The document referred to above was marked Commonwealth's Exhibit No. 1 for identification.)

CROSS EXAMINATION

By Mr. Bullock:

* * * * *

page 10 } Now when you returned to your office Monday, what did you find?

A. Well, they had called me on the phone Saturday and told me that they had found the place had been broken into, and when I came back on Monday it had been straightened up, but I found the office itself, many papers had been strewn all over the place and it was just generally a mess. And someone had tried to chisel through the safe in the back. The safe is solid concrete and he was hoping, apparently, to get the safe out from the back and then chiseled the front and the combination door had been torn apart.

Let's see, the drawers in my desk had been gone through. That's about all.

Q. Were you there when—were you in the office when the police came to take the fingerprints?

A. No, sir. That was done on a Saturday and I didn't come in on a Saturday.

Q. I see.

Outside the safe and the papers, what else was disturbed in your office?

A. I don't know what you're looking for when you say, "What else was disturbed?"

Q. Did there appear to be any attempt to force

page 11 } any other?

A. Oh, well, I have a closet, it's like a closet, and the door had been forced open. I had it locked and the key for it. It had been forced upon; the door to my office itself had been forced open.

Mr. Bullock: All right.

No further questions.

Willie Walker

* * * * *

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Whereupon

WILLIE WALKER a witness, was called for examination by counsel on behalf of the Commonwealth, and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Kent:

Q. Would you please state your name?

A. Willie Walker.

Q. Where are you employed, Mr. Walker?

A. Alexandria Redevelopment Housing Authority.

Q. How long have you worked with them?

A. Approximately 22 years, somewhere around 22 years.

Q. Mr. Walker, I call your attention to March 25th of last year, 1966. Do you recall, rather, on March 26, 1966, do you recall in the early morning hours being called to the premises of the Alexandria Housing Authority at 3210 King Street?

A. I wasn't called there. I go to work at eight o'clock.

Q. Do you work on Saturdays, too?

A. Seven days, every other Saturday. That was my Saturday off.

Q. Did you discover anything unusual upon ar-
page 13 } riving at 3210 King Street?

A. Well, when I drove into the lot and I got out of my car and went in the back door as usual and the auditorium door was open. You see, that has a bar on the inside and the door on this side that goes in. Well, that door was open. I thought Mr. Bosman was there, another fellow that was in.

So I went in, calling him, and I went on up the hallway and called him and he didn't answer, so when I got around in the hall, he didn't answer, and the coke machine was sitting open. I said, "Oh, somebody's done been in here."

So I peeped over in the office, which is another door to the office, and I seen all this. The desk drawers and everything was scattered on the floor. I looked over at the safe and it was beat off, the corner of it, and a screwdriver drove on in it.

Willie Walker

And so I went on back out and went up to Bosman and called Mr. Campbell, who's our superintendent.

Q. What about the door to the office? Could you tell was there any mark on the door to the office?

A. It was pried open.

Q. How could you tell that?

A. Because the little lock was just hanging on it, but I didn't touch it.

page 14 } Q. Had you checked that lock before you went home the night before?

A. Oh, yes.

Q. Was it locked when you went home the night before?

A. Yes, it was.

Q. Did you lock up the entire building?

A. The whole building.

Q. And it was locked up when you went home the night before?

A. Yes, sir.

Mr. Kent: Thank you very much, Mr. Walker.

CROSS EXAMINATION

By Mr. Bullock:

Q. What time did you leave the building?

A. Well, Mrs. Lindner, she usually comes out of the office around five and I goes up, puts a bar across the front door, and which she locks her office door, and then I opens the door and goes to the back door. We have another garage door the fellows usually put their tools in, so I checked that door and that was locked, and come on out and slam that door lock.

Q. How many entrances are there to the building?

A. Well, that's five doors, which there's one

page 15 } garage door, there's one on the front as you come into her office which goes to the auditorium and then there's another one on King Street side which has three and there's two on the back.

Q. Isn't it possible that on the 25th or Friday when you left that one of those doors might not have been secured, or as secure as it could have been?

A. No, sir. If it had of been, it was my duty to fix it, which I would have fixed it before I left there, and it was working all right at 12:00 o'clock.

Willie Walker

Mr. Bullock: No further questions—oh, well, let me ask you this.

* * * * *

Q. Were you in the building when the fingerprint men came?
A. Yes, sir.
Q. You saw them take the fingerprints?
A. Yes, sir. He was there and Mr. Campbell told me not to leave until—frankly, I don't leave anyway unless there is a call, only in an emergency.
Q. Did you see them take fingerprints on the safe?
A. Well, he was dusting it. I don't know whether he got any or not, but he was—whatever he was doing with that dust. He even dusted the coke machine in the hall.

page 16 } Mr. Bullock: Okay.
No further questions.

REDIRECT EXAMINATION

By Mr. Kent:
Q. Do you know anything about fingerprints, Mr. Walker?
A. No more than I have seen them after they have taken some of them.
Q. You don't know whether they got any fingerprints out of there or not, do you?
A. I don't know.

Mr. Bullock: Objection.
The Court: Objection sustained.
Mr. Kent: I have no further questions of this witness.

* * * * *

Mr. Kent: Detective Fitzsimmons.
Mr. Bullock: Mr. Kent, we can save some time today and we will stipulate to the effect that he found this—
Mr. Kent: Detective Fitzsimmons is not going to do that. He is going to testify about the arrest that occurred on June 13th, 1966 on North St. Asaph Street. If you are willing to stipulate what his testimony will be—
page 17 } Mr. Bullock: Yes, we are willing to stipulate

that his testimony would be this. We are also willing to stipulate that they found a credit card in the pocket of the defendant. There is no need for that.

Mr. Kent: You are willing to stipulate that he identified the—that this is the same card he took out of the possession of the defendant?

Mr. Bullock: We are willing to stipulate that.

Mr. Kent: That is the Commonwealth's case, Your Honor.

The Court: Just a minute, now.

The testimony of Detective Fitzsimmons would be as to the arrest?

Mr. Kent: Yes, sir.

The Court: Of June 13, 1966?

Mr. Kent: Yes, sir.

The Court: As he has previously testified in other cases involving this defendant tried here today, it is further stipulated that Exhibit No. 1 for identification was found on the person of the defendant?

Mr. Kent: Yes, sir, at police headquarters by now Sergeant Hill of the Alexandria Police Department, then he was Corporal Hill, taken out of the billfold of the de-
page 18 } fendant on that evening at police headquarters.

The Court: Is that so stipulated?

Mr. Bullock: Yes, that is stipulated.

The Court: Now, are you introducing this into evidence at this time?

Mr. Kent: Yes, sir.

The Court: Do you object to the introduction of this into evidence?

Mr. Bullock: We will stipulate that, but we will object to its introduction into evidence and note my exception.

The Court: Well, let me make a ruling on Exhibit No. 1, which is a credit card.

The Court does hereby receive into evidence Exhibit No. 1 on behalf of the Commonwealth over the objection of the defendant.

(The document heretofore marked Commonwealth's Exhibit No. 1 for identification was received in evidence.)

* * * * *

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Whereupon

JAMES P. HILL a witness, was called for examination by counsel on behalf of the Commonwealth, and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Bullock:

Q. State your name, please?

A. Sergeant James P. Hill.

Q. Your occupation?

A. Police Sergeant, Alexandria Police Department, Identification Bureau.

Q. Sergeant Hill, how long have you been in the Identification Bureau?

Mr. Kent: Your Honor, the Commonwealth is willing to stipulate that this man is a most qualified expert in the field of fingerprinting.

The Court: All right.

It is stipulated that the Sergeant is qualified and is a qualified fingerprint expert.

By Mr. Bullock:

Q. On, or shortly after June 6—I mean, June 13, 1966, did you have occasion to receive some prints that were taken from the Alexandria Housing Authority at
page 20 } 600 North West Street?

Mr. Kent: I'm not sure that I would agree with the phrasing of this. Unless Sergeant Hill took them himself, I'm not sure that he would know where these prints came from, unless it was told to him, and that, of course, would be hearsay.

The Court: Repeat the question again, Mr. Bullock.

By Mr. Bullock:

Q. Did you have occasion to receive some prints identified as coming from 600 North West Street, the Alexandria Housing Authority, on or shortly after June 13th, 1966?

A. To the best of my knowledge, I observed some finger-

print lifts from the Alexandria Housing Authority around that date, but I do not know the location of the Housing Authority.

Q. I understand.

Did you make a comparison test between the fingerprints found there and the prints of one James Sullivan, Jr.?

A. I made a comparison also of the fingerprint lifts of a location of the Alexandria Housing Authority, James Sullivan, Jr., yes, sir.

Q. What results did you find?

A. The particular latents I checked of the ink was negative.

page 21 } Mr. Bullock: No further questions.

CROSS EXAMINATION

By Mr. Kent:

* * * * *

The Court:

* * * * *

page 22 } If the Commonwealth Attorney asked a question, "Can you detect fingerprints from one who is wearing gloves," I would permit that question. It has the same effect.

By Mr. Kent:

Q. Sergeant Hill, can you detect fingerprints from a person who is wearing gloves?

A. No, sir, not so long as he keeps the gloves on his hands.

Q. Sergeant Hill, did you have any occasion to visit the premises of 3210 King Street, in the City of Alexandria, the whereabouts of the Alexandria Redevelopment Housing Authority, around March 25th, 1966?

A. No, sir, I did not.

Q. You said that some prints came into your hands, some latents came into your hand. Where did they come from, do you know?

A. To the best of my knowledge, they were lifted at the scene.

James P. Hill

Q. Well, who took them?
A. Corporal Streapy.
Q. You don't know where Corporal Streapy picked up these prints, do you?
A. No. sir.

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* * * * *

Q. Sergeant Hill, you stated that you compared some prints that came from latents that came into your hands with some prints purporting to be that of James Junior Sullivan. Did you take the prints of James Junior Sullivan?
A. No, sir, not to my knowledge.
Q. So, there again, you are dealing with something that you really didn't do yourself; is that correct?
A. That's correct, yes, sir.
Q. From your experience, Sergeant Hill, from in a public place such as the Alexandria Redevelopment Housing Authority, what would be your estimate of the number of latent prints that would be taken from an office from different persons?
A. Actually, there would be no—

page 24 } Mr. Bullock: Your Honor, we are going to object to that question. Admittedly, the Sergeant Hill is an expert, but he has also admitted the fact that he did not lift these prints and he couldn't make an estimate without seeing the building.
Mr. Kent: I'm asking him a hypothetical question, Your Honor, about a public building, not this specific building.
The Court: Objection sustained.
Mr. Kent: I have no further questions of this witness.

REDIRECT EXAMINATION

By Mr. Bullock:
Sergeant Hill, you have had quite a bit of experience making comparison tests; is that right?
A. Yes, sir.
Q. And I assume that in most instances, frequently, you do not lift the prints yourself?
A. That's correct.
Q. And you have to rely on the prints as brought to you

and you also rely on your records with respect to prints that you've taken of other suspects; is that correct?

A. For the initial comparison, yes.

Mr. Bullock: Thank you.

page 25 } The Court: You are excused.

* * * * *

Mr. Bullock: I feel that the defendant should be found not guilty on this particular matter. The Commonwealth's evidence has consisted of facts of breaking and entering. We have no dispute necessarily with those facts. It also consists of the finding of a credit card on the defendant.

I think the fingerprint evidence, from the defendant's point of view, established at least this much, in the absence of the defendant on the scene at that particular time.

It is true that from March 25th to June, sometime, June 13th, several months later, this card is found in his possession, but we do not think that that card is sufficient to establish the elements of breaking and entry that is necessary and that the only thing that that card indicates, that possibly *it* was in the possession of stolen property. Or from

page 26 } a legal point of view, that the defendant might not have stolen the card. He could have found the card. But it really wouldn't even go to the establishment of larcency because the time period there, that couldn't fall in the category of being recent stolen goods of which you could infer larceny.

We don't think that that card is sufficient to establish the case of breaking and entering and that the evidence of the defendant here, which we think is reliable, on the fingerprint evidence, establishes the fact that the defendant was not there.

And for those reasons we think the defendant on this particular indictment should be found not guilty.

The Court: All right:

Mr. Kent: I agree with many things that Mr. Bullock has said, Your Honor, but I think he has overlooked several items.

Number one is, this may not be as recent stolen property as we've had in the other cases, but yet, still we have no explanation. If we heard testimony that this defendant was walking down Queen Street one night, this card was on the

ground and he picked it up and put it in his pocket, fine. I think then the Commonwealth would have a very difficult time to prove that this man is guilty of the of-
page 27 } fense he is charged with. But that is not true; we don't have any evidence that he found this on the street, or that Standard Oil Company sent this card to him in the mail.

The testimony is, the Alexandria Redevelopment and Housing Authority was broken into and this card was found in the possession of the defendant at police headquarters in June of 1966.

This card has been positively identified by Susan Lindner, an employee of the Alexandria Redevelopment and Housing Authority, and has been stipulated, it was found on the defendant by Sergeant Hill.

Your Honor, we could stand here and talk about fingerprints for hours on end, but all of us know that it is a very rare occasion that the Commonwealth is fortunate enough to have a good set of fingerprints to use in the case. I think that Mr. Bullock is relying a little bit too much on fiction if he thinks that the Commonwealth can come up with fingerprints in every case. If we could, then we would be solving a lot more crimes than we are solving today. It is very, very difficult to find these fingerprints in a place that is as public as the Alexandria Redevelopment and Housing Authority is. I don't think there is any question about that.
page 28 } This defendant broke into the Redevelopment and Housing Authority on March 25th, 1966. An item stolen from that place of business was found on his person three months later, and the Commonwealth contends that is within the purview of the law of recently stolen property. Three months is certainly recent.

The Court: This is the weakest of the cases that I've heard today.

I am forced to agree with Mr. Kent, Mr. Bullock, that if this defendant had taken the stand and said that "I found this card," there would be some explanation of how he got it, but I would have to speculate as to how he got it at this point. He had it and it's unexplained.

The Housing Authority was broken into. I am completely forgetting the fact and not taking into consideration that I have just found him guilty of breaking into three other places. Because there is no jury here, I am completely disregarding that, as if that evidence wasn't present.

There just isn't any evidence at all as to how he got it, so I've got to assume that he got it from breaking into the Hous-

ing Authority. And it's a circumstantial case and there is circumstantial evidence, but it's unexplained.

And in view of the fact that it is unexplained, I page 29 } think it is sufficient to find this man guilty under this indictment, although I say it is purely a circumstantial case.

All right, will you stand, please?

Mr. Bullock: Your Honor, we would like to note our objection to your ruling as contrary to the law and evidence in the matter.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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